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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1932

No. [redacted] 44

L. M. DAKIN (Successor to A. M. Anderson), as Receiver of the First National Bank of St. Petersburg, Petitioner.

*versus*

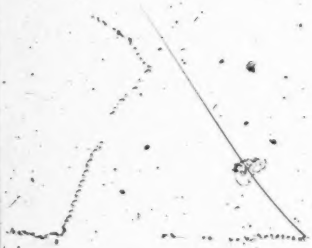
TAVER BAYLY, as Liquidator of the Peoples Bank of Clearwater, Respondent.

## Brief of Respondent, Taver Bayly, as Liquidator of The Peoples Bank of Clearwater, Florida

THOMAS HAMILTON,
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MELVIN A. McMULLEN,
CHESTER B. McMULLEN,
CYRIL E. POGUE,
*Of Counsel for Respondent.*





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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1932

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## No. 930

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L. M. DAKIN (Successor to A. M. Anderson), as Receiver of the First National Bank of St. Petersburg, Petitioner,

*versus*

TAVER BAYLY, as Liquidator of the Peoples Bank of Clearwater, Respondent.

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# Brief of Respondent, Taver Bayly, as Liquidator of The Peoples Bank of Clearwater, Florida

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Comes now Taver Bayly, as Liquidator of the Peoples Bank of Clearwater, Florida, Respondent, and respectfully submits this his brief, in opposition to the petition for writ of certiorari heretofore filed by the petitioner, L. M. Dakin, Receiver of the First National Bank of St. Petersburg, Florida, in the above entitled cause.

## Statement of Facts

The First National Bank of St. Petersburg acted as collecting agent in St. Petersburg, Florida, for the Peopes Bank of Clearwater, Florida, and the Peoples Bank of Clearwater in turn acted as collecting agent for the First National Bank of St. Petersburg in the same manner and in the same way that the St.Petersburg bank in turn acted for the Clearwater bank. On June 9, 1930, the First National Bank of St. Petersburg failed. At the time of its failure, the St. Petersburg bank *had collected and held in its vaults* funds for the Peoples Bank of Clearwater amounting to $2,898.40. Prior to the date of its failure, the First National Bank of St. Petersburg had attempted to remit these funds to the Peoples Bank of Clearwater, Florida, by issuing to the Peoples Bank a series of drafts drawn on the Chase National Bank of New York. The First National Bank of St. Petersburg closed before the Peoples Bank, acting in due course, had made collection of these drafts. At the same time the Peoples Bank of Clearwater had collected for the First National Bank of St. Petersburg the aggregate amount of $2,631.30. The Peoples Bank of Clearwater retained this amount as a set-off against the collection made by the First National Bank of St. Petersburg. While this suit was in progress in the District Court,

the Peoples Bank of Clearwater also became insolvent and the Respondent was named by the Comptroller of the State of Florida as liquidator. The Petitioner, as Receiver of the First National Bank of St. Petersburg, Florida, in a dual capacity represents the depositors and the First National Bank of St. Petersburg, and in a like capacity the Respondent represents the depositors and the Peoples Bank of Clearwater.

## Argument

The Circuit Court of Appeals of the Fifth Circuit, in affirming the judgment of the District Court allowing the Respondent a set-off, held that Section 6834 of the Compiled General Laws of Florida (which section does nothing more than define the liability of a bank of deposit to its depositors for diligence in making a collection of a check or draft deposited with it) must of necessity be construed with Section 6810 of the Compiled General Laws of Florida, both of said sections being a part of the Florida Negotiable Instruments Law; Section 6810 providing that

> "The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course, discharges the instrument."

In construing the above statutes, the Respondent earnestly submits that it was of no concern to the Petitioner whether the Clearwater bank

obtained the checks for which the Petitioner remitted its drafts from its depositors for collection or for value. See McCullough vs. Driggs, 35 Fla. 277, 17 So. 407; Brown vs. First National Bank, 86 Fla. 198, 97 So. 351. We respectfully call attention to the able opinion rendered by the Circuit Court of Appeals of the Fifth Circuit, which is found beginning at the bottom of page 30 of the Transcript of Record. We also call attention to the fact that this opinion was rendered by a unanimous decision of the Honorable Judges of said Court.

We call attention to Section 4326 of the Compiled General Laws of Florida which sets forth the right under the laws of Florida for a defendant to set-off the mutual indebtedness against the plaintiff. See also the following cases in which both Federal and Florida Courts have approved set-off between an insolvent bank and a defendant:

Camp v. First National Bank, 44 Fla. 497; 33 So. 241.

Scammon v. Armstrong, 92 U. S. 362; 23 L. Ed. 483.

Scott v. Armstrong, 146 U. S. 499; 36 L. Ed. 1059.

Durkee v. National Bank of State of Florida, 42 C. C. A. 674; 102 Fed. 845.

George D. Harter Bank of Canton, Ohio v. Inglis, 6 F (2nd) 841.

Hardley v. Clothier, 2 C. C. A. 349; 51 Fed. 506.

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Prudential Realty Company v. Allen, 241 Mass. 277; 25 A. L. R. 935 and Note.

Gerseta Corporation v. Equitable Trust Co. 241 N. E. 418; 43 A. L. R. 1320.

This Honorable Court in the case of Scott vs. Armstrong, 146 U. S. 499, defined the Rule of set-off to be

> "Where the mutual obligations have grown out of the same transaction, insolvency on the one hand justify the set-off of the debt on the other."

On page 3 of the forcible and enlightening brief of the Comptroller of the Currency, as Amicus Curiae herein, we find the following

pertinent statement:

> "For a period of years it has been the understanding of the Comptroller of the Currency, that only such demands as were mutual at the time of an insolvent national bank's suspension, that is, beneficially owned by the same parties in the same right, can be made the basis of set-off."

The Respondent respectfully submits that the Circuit Court of Appeals in this case decided that the pleadings herein revealed the identical question of mutuality which the learned counsel says is the basis of set-off.

The pleadings in this case reveal that regardless of the capacity in which the Respondent claimed an indebtedness against the Petitioner, that the Petitioner finds himself in the same identical position with the Respondent, thus conclusively showing mutuality.

This Respondent respectfully submits that the question decided in this case by the Circuit Court of Appeals of the Fifth Circuit is not in conflict with the weight of authority, inasmuch as the principles and rules governing the right of set-off have long been adhered to by this Honorable Court; that the Circuit Court of Appeals in this case has merely correctly applied those general provisions of law which this Court so ably laid down in the case of Scott vs. Armstrong, Supra. The Respondent suggests that it

would be of no material benefit to the Comptroller of the Currency or to the various Federal bank receivers to have this Court again reiterate the law on the question of set-off, inasmuch as the Circuit Court of Appeals in this case has correctly interpreted said law.

The Respondent respectfully shows that the opinion in this case as handed down by the Circuit Court of Appeals of the Fifth Circuit, is in no wise in conflict with the opinion in the case of Federal Reserve Bank of Richmond vs. Early, 30 Fed. (2nd) 198, and is in no wise in conflict with the Circuit Court of Appeals of the Eighth Circuit in the case of Hirning vs. Federal Reserve Bank of Minneapolis, 52 Fed. (2nd) 382, nor is said decision in conflict with the decision of this Honorable Court in the case of Early vs. Federal Reserve Bank of Richmond, 281 U. S. 88, inasmuch as in all of the above cases the element of mutuality is lacking, while in this case the element of mutuality between the parties is clear and definite.

The Respondent further suggests that the question of preferment of creditors is not raised by the pleadings, and is not an issue in this case, but it is purely a legal question of set-off.

WHEREFORE it is respectfully submitted that the petition for the writ of certiorari should by this Honorable Court be denied.

THOMAS HAMILTON,
*Attorney for Respondent.*

MELVIN A. McMULLEN,
CHESTER B. McMULLEN,
CYRIL E. POGUE,
*Of Counsel for Respondent.*

